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July 30, 2004

Sent via e-mail, hand delivery and/or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Proceeding by the Department on its own motion to implement the requirements of the Federal Communications Commission's Triennial Review Order regarding switching for mass market customers, D.T.E. 03-60

Dear Ms. Cottrell:

The Attorney General submits these comments to the Massachusetts Department of Telecommunications and Energy ("Department" or "DTE") in response to the Department's June 15, 2004 memorandum. The Department should follow the Federal Communications Commission's ("FCC") interim rules for unbundled network elements ("UNE") and monitor the UNE transition plans for competitive local exchange carriers ("CLECs") to ensure UNE customers avoid service interruption.

Background

On June 15, 2004, the Department accepted Verizon's commitment to give competitive local exchange carriers ("CLECs") 90 days notice of any changes in its existing provisioning of unbundled network elements ("UNEs").¹ Consequently, the Department declined to consider further on two pending CLEC "Standstill Petitions"² and requested comments on the issues raised regarding Verizon's obligations to provide certain UNEs to CLECs.

¹ DTE 03-60 Memorandum (June 15, 2004) ("Memorandum").

² *CLEC Petition for an Expedited Order that Verizon Remains Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the Parties' Interconnection Agreements*, DTE 03-60 (May 27, 2004); *AT&T Emergency Motion for an Order to Protect Consumers by Preserving Local Exchange Market Stability*, DTE 03-60 (May 28, 2004).

On June 23, 2004, Verizon asked the Department to remove certain tariff provisions in its wholesale tariff, M.D.T.E. Tariff No. 17, including Verizon's current requirement to provision new UNE switching orders for ports containing greater than four lines.³ Verizon proposes to bill CLECs for UNE-P arrangements that are subject to the tariff revision and remain in place after August 22, 2004 at Verizon's higher resale business rate.⁴

The Department sought and received comments on Verizon's tariff withdrawal.⁵ On July 22, 2004, the Department suspended the Verizon tariff until January 23, 2005.⁶

Discussion

The Department's request focuses primarily on the nature and extent of Verizon's obligations to provide UNE-P to competitors, and the pricing structure for providing UNE-P (based on incremental costs or just and reasonable rates). On July 22, 2004, the Federal Communications Commission ("FCC") voted on interim UNE rules that would freeze existing network interconnection agreements for six months.⁷ The Department should review the FCC's interim UNE rules for guidance on the extent of Verizon's obligations and whether a hot-cut process is necessary.⁸

³ Verizon Tariff filing, 6-23-04 TT 04-49 MA TRO DSI Ent Switch 4 Line Carve Tariff ("Verizon Tariff Revision"). Verizon asserts that it gave timely notice on May 18, 2004, to CLECs who had UNE-P arrangements covered by interconnection agreements. Verizon's reply comments (July 14, 2004), at 6. Verizon does not say, however, whether or how it notified CLECs whose UNE-P arrangements are not covered by interconnection agreements.

⁴ Verizon Tariff Revision at 2, n. 3.

⁵ DTE Procedural Memorandum, Notice of Proposed Tariff Revisions to Verizon Tariff M. (June 28, 2004).

⁶ *Investigation by the Department of Telecommunications and Energy on its own motion as to the propriety of the rates and charges set forth in the following tariff: M.D.T.E. No. 17, filed with the Department on June 23, 2004 to become effective on July 23, 2004 by Verizon New England, Inc. d/b/a Verizon Massachusetts*, D.T.E. 04-73, Order (July 22, 2004).

⁷ "FCC Adopts Interim UNE Rules; Analysts See Rough Road for CLECs," Telecommunications Reports Daily, July 23, 2004. TR Daily reports that the FCC will issue the rules and a Notice of Proposed Rulemaking any day now. *Id.*

⁸ The FCC directed state commissions to investigate and, if appropriate, approve a batch hot cut process. "State commissions must approve, within nine months of the effective date of this Order, a batch cut migration process to be implemented by incumbent LECs that will address the costs and timeliness of the hot cut process. Alternatively, state commissions must make detailed findings explaining why such a process is not necessary in a particular market" FCC Triennial Review Order, ¶ 488.

The Department should also focus on how, if necessary, CLECs will transition their UNE-P customers to other service arrangements and how many customers Verizon's tariff revision will affect. The Department should protect the UNE-P customers from service interruptions during their providers' transition from UNE-P to UNE-L, Voice over Internet Protocol ("VoIP"), or other service arrangement. Dramatic market interruptions benefit no one. The Department should strive to ensure that consumers currently served by UNE-P experience a seamless and painless transition to another service arrangement.

The Department should monitor CLEC transition plans to ensure the affected customers do not experience service outage by requiring Verizon to provide the number of customers and access lines, aggregated by CLEC, that its proposed tariff revision will affect. The Department should also require those CLECs who will transition their customers because of the tariff revision to submit their transition plans to the Department.⁹ The Department should then oversee those plans and respond quickly to consumer complaints of lost service. This oversight will better serve consumers by heightening the CLECs' and Department's awareness of any problems during the transition.

Conclusion

In determining the extent of Verizon's unbundled network element obligations, the Department should follow the FCC's interim UNE rules and should monitor the UNE-P transition plans to shift customers to alternate network arrangements to avoid service interruption.

Sincerely,

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KJR/kr

cc: Jesse S. Reyes, Hearing Officer
Paula Foley, Assistant General Counsel
D.T.E. 03-60 service list

⁹ The Department adopted a similar approach when implementing new area codes. *See, e.g.,* D.T.E. 99-99, *Area Codes*, Order (June 3, 2000) ("Carriers must amend their implementation plans and customer education materials to reflect the changes made by this Order, and must file the amended documents with the Department").

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Switching for Mass Market Customers)
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